

HOUSE BILL No. 1679

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-28-3.

Synopsis: Mechanic's liens. Requires written notice of lien rights to a property owner by a person who provides labor, materials, or machinery for certain construction or improvements to real property not later than 30 days after work begins. Prohibits a lien against a first party or property owner if: (1) the first party enters into a contract for certain improvement to real property with a second party; (2) the second party subcontracts work to a third party; and (3) the first party has fully paid the second party under the contract.

Effective: July 1, 2003.

Brown C, Burton

January 21, 2003, read first time and referred to Committee on Financial Institutions.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1679

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 32-28-3-1, AS ADDED BY P.L.101-2002,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 1. (a) A contractor, a subcontractor, a mechanic,
4 a lessor leasing construction and other equipment and tools, whether or
5 not an operator is also provided by the lessor, a journeyman, a laborer,
6 or any other person performing labor or furnishing materials or
7 machinery, including the leasing of equipment or tools, for:

8 (1) the erection, alteration, repair, or removal of:

9 (A) a house, mill, manufactory, or other building; or

10 (B) a bridge, reservoir, system of waterworks, or other
11 structure; ~~or~~

12 (2) the construction, alteration, repair, or removal of a walk or
13 sidewalk located on the land or bordering the land, a stile, a well,
14 a drain, a drainage ditch, a sewer, or a cistern; or

15 (3) any other earth moving operation;

16 may have a lien as set forth in this section.

17 (b) A person described in subsection (a) may have a lien separately



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or jointly upon the:

(1) house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:

(A) that the person erected, altered, repaired, moved, or removed; or

(B) for which the person furnished materials or machinery of any description; and

(2) on the interest of the owner of the lot or parcel of land:

(A) on which the structure or improvement stands; or

(B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

(1) machinery;

(2) tools;

(3) stock;

(4) material; or

(5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract for the construction, alteration, or repair of:

(1) a Class 2 structure (as defined in IC 22-12-1-5);

(2) an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or

(3) property that is:

(A) owned, operated, managed, or controlled by a:

(i) public utility (as defined in IC 8-1-2-1);

(ii) municipally owned utility (as defined in IC 8-1-2-1);

(iii) joint agency (as defined in IC 8-1-2.2-2);

(iv) rural electric membership corporation formed under

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- 1 IC 8-1-13-4;
 2 (v) rural telephone cooperative corporation formed under
 3 IC 8-1-17; or
 4 (vi) not-for-profit utility (as defined in IC 8-1-2-125);
 5 regulated under IC 8; and
 6 (B) intended to be used and useful for the production,
 7 transmission, delivery, or furnishing of heat, light, water,
 8 telecommunications services, or power to the public;
 9 may include a provision or stipulation in the contract of the owner and
 10 principal contractor that a lien may not attach to the real estate,
 11 building, structure or any other improvement of the owner.
 12 (f) A contract containing a provision or stipulation described in
 13 subsection (e) must meet the requirements of this subsection to be valid
 14 against subcontractors, mechanics, journeymen, laborers, or persons
 15 performing labor upon or furnishing materials or machinery for the
 16 property or improvement of the owner. The contract must:
 17 (1) be in writing;
 18 (2) contain specific reference by legal description of the real
 19 estate to be improved;
 20 (3) be acknowledged as provided in the case of deeds; and
 21 (4) be filed and recorded in the recorder's office of the county in
 22 which the real estate, building, structure, or other improvement is
 23 situated not more than five (5) days after the date of execution of
 24 the contract.
 25 A contract containing a provision or stipulation described in subsection
 26 (e) does not affect a lien for labor, material, or machinery supplied
 27 before the filing of the contract with the recorder.
 28 (g) Upon the filing of a contract under subsection (f), the recorder
 29 shall:
 30 (1) record the contract at length in the order of the time it was
 31 received in books provided by the recorder for that purpose;
 32 (2) index the contract in the name of the:
 33 (A) contractor; and
 34 (B) owner;
 35 in books kept for that purpose; and
 36 (3) collect a fee for recording the contract as is provided for the
 37 recording of deeds and mortgages.
 38 (h) A person, firm, partnership, limited liability company, or
 39 corporation that sells or furnishes on credit any material, labor, or
 40 machinery for the alteration, **improvement**, or repair of **a:**
 41 **an owner occupied single or double family dwelling or the**
 42 **appurtenances or additions to the dwelling (1) parcel of land; or**

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(2) building, structure, or anything permanently affixed to a parcel of land;

to

~~(1)~~ a contractor, subcontractor, mechanic, or

~~(2)~~ anyone other than the ~~occupying~~ owner or the owner's legal representative must furnish to the ~~occupying~~ owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a ~~single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place~~ **building, structure, or anything permanently affixed to a parcel of land** to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

(A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or

(B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor;

with a written notice of the delivery or labor and the existence of lien rights not later than ~~sixty (60)~~ **thirty (30)** days after the date of the first delivery or labor performed; and

(2) file a copy of the written notice in the recorder's office of the county not later than ~~sixty (60)~~ **thirty (30)** days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value ~~without notice of a single or double family dwelling for occupancy by the purchaser~~ unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 2. IC 32-28-3-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2003]: Sec. 1.5. (a) As used in this section, "person" means an individual, a firm, a partnership, a joint venture, a corporation, an association, a trust, a cooperative, a limited liability company, or other legal entity.

(b) If a person contracts with a second person for improvements to a parcel of land or anything permanently affixed to the parcel of land and the second person contracts with a third person to fulfill all or part of the contract between the first person and second person, the third person is not entitled to obtain a lien against the real property of the first person or owner of the real estate if the first person fulfills all payment obligations of the contract between the first person and the second person. A sworn statement or notice of intent to hold a lien against the real estate that is:

(1) sent to the first person; or

(2) filed in the office of the recorder as provided in this chapter;

is void if the first person fulfills all payment obligations of the contract between the first person and the second person. The recorder shall show that the real estate is unencumbered by the lien upon the filing of an affidavit by the first person stating that the first person has fulfilled all payment obligations of the contract between the first person and second person.

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